



**U.S. OFFICE OF SPECIAL COUNSEL**

1730 M Street, N.W., Suite 300  
Washington, D.C. 20036-4505

[www.osc.gov](http://www.osc.gov)

The Special Counsel

August 3, 2007

The Honorable Tom Davis  
Ranking Member  
Committee on Oversight and Government Reform  
U.S. House of Representatives  
2157 Rayburn House Office Building  
Washington DC 20515-6143

Dear Congressman Davis:

Please find attached our responses to your Questions for the Record dated July 20th. I look forward to our continued correspondence.

Sincerely,

A handwritten signature in blue ink, appearing to read "Scott J. Bloch", with a long, sweeping horizontal line extending to the right.

Scott J. Bloch  
Special Counsel

cc The Honorable Henry Waxman

# Safeguarding the Merit System: OSC Response to Questions for the Record From the Honorable Tom Davis (R-VA)

(Note: this hearing was held on July 12, 2007, before the House Committee on Oversight and Government Reform's subcommittee on the Federal Workforce.)

1. At the hearing, the Ranking Member disclosed an e-mail apparently from your personal account, dated Tuesday, June 19, 2007 at 11:52 a.m. That e-mail ("the June 19 e-mail") discusses official business relating to the agency you head the OSC. The e-mail discusses OSC's reauthorization hearing, disparages an individual under investigation by OSC and two Members of the U.S. House of Representatives with oversight responsibility for your agency.

- a. Please identify all e-mail communications sent from a non-governmental account controlled by you since January 26, 2007, including but not limited to the above-listed AOL account, where you discuss official agency business, including those e-mails where you name individuals currently under investigation by your agency or Members of the U.S. Congress. When identifying all e-mail communications, we ask you to list the account the e-mail was sent on, the date, the time, the subject, and all individuals named in the text of the e-mail.

**A: As I stated at the hearing, my personal email is of no relevance to OSC agency business. I did not refuse to answer. I honestly did not know where I was at the time and, to the best of my recollection, so stated. The content of the email is not official agency business and could not be construed as lobbying. This matter is before the President and that is all that should be said on the matter. OSC is engaged in continuing investigations of presentations and other government officials, and I would respectfully advise that the committee realize that OSC must continue to do its job as an independent investigative and prosecutorial agency free of interference.**

2. Your location at the time could corroborate whether the June 19 e-mail reflects the use of nongovernmental e-mail systems to conduct official business. At the hearing, Rep. Issa asked you where you were on June 19, 2007 at 11:52 a.m. You refused to answer.

- a. Please explain the basis for your refusal?

**A: I did not refuse to answer. As the Director of my agency, I am frequently asked to travel at the last moment and take trips out of town. I remain on duty in my position all day, every day. In addition, as a Presidentially-appointed, Senate-confirmed official who is**

presumed on duty 24 hours a day, I am not subject to time and attendance requirements and thus find it impossible to account for every hour of a given day. I am unable to tell you where I was at the time in question; however, I sometimes find myself closer to home than the office during a normal work day or find it more convenient to work from home right before I travel out of town. Therefore, I was either at my government computer in Washington, D.C., or at home on my computer. However, given the time, I was certainly taking my lunch and responding to personal correspondence on my personal email account at that time.

b. Rep. Issa asked you to determine the answer to this question and notify the Committee. Have you?

**A: See Answer 2a.**

c. Where were you on June 19, 2007 at 11:52 a.m.?

**A: See Answer 2a.**

d. Was government-supplied computer equipment used in the composition or transmission of the e-mail message you sent on June 19, 2007 at 11:52 a.m. on the scottb1132@aol.com account?

**A: If I was at the office, this personal use of the e mail through the internet is consistent with OSC's *de minimis* policy on personal use of government computers and internet to send or receive personal email, which most other agencies have.**

3. At the hearing, Committee members expressed their concern to you about the repeated disparagement of Administrator of General Services Lurita Doan. As they explained at the hearing, your staff disparaged her at an April 26, 2007 Congressional briefing and at a May 2, 2007 social event. You conceded that these comments were inappropriate, presumably because they prejudice the subject of your investigation and suggest bias by the agency against the subject. Moreover, you reinforced that sense of bias by personally disparaging her in your June 19 e-mail.

a. What have you done to remedy this situation?

**A: I have determined that no OSC employee with any involvement in the Doan investigation behaved improperly with respect to that investigation. All persons involved in the actual decision-making, including myself, based all decisions on sound evidence and law. The career staff did the investigation and wrote the report and made the**

recommendations about discipline, with which I agreed. The matter is currently before the President. It would be improper for me comment to further on a pending investigation.

Regarding other employees, no action will be taken, as it would possibly infringe First Amendment protections. I naturally hope that every employee will be conscientious regarding the public perception of our agency and refrain from public comments about our agency's current investigations. We have reminded our employees of that responsibility and trained them at various times. However, I will do nothing more to investigate them or their actions.

b. What do you plan to do to restore confidence in your agency's broken investigative process?

**A: I take issue with the premise of this question. You attack the good work of the career staff without basis. OSC now functions more efficiently than it has at any time in its history. I will remind you of the bi-partisan staff investigation undertaken by this committee in the spring of 2005, refuting attacks that OSC had failed in its four main areas of enforcement. Your letter also correctly concluded that OSC had not thrown out cases without proper review as had been alleged, and praised our "hard work" and "smart work" for whistleblowers. I have attached a copy of that May 17, 2005 letter for your convenience.**

The changes that I have instituted at the agency were bound to create some dissension as any change will at any agency. However, this dissension has not affected our enforcement mission. OSC investigations and reports have been done timely, without bias and have brought to bear the vast experience of the government professionals of my office. We will continue to hold down any backlogs to give whistleblowers their "day in court" and will continue to be vigilant and nonpartisan in our investigations. The investigative process at OSC is not broken.

4. The improper disclosure of an unpublished and unfinished OSC report on GSA Administrator Lurita Doan prejudiced her ability to respond effectively and, again, suggests bias by the agency. A report that can withstand scrutiny need not be prematurely disclosed to the press for political or public relations advantage. OSC Communications Director James Mitchell acknowledged in a telephone conversation with our staff that the source of this leak could only have been your agency and that he would make sure that you understood that. He further advised that OSC would not make any internal inquiry about it because leak investigations never go anywhere.

At our hearing, you provided a less than clear explanation of your understanding of this leak, including an invocation of your First Amendment right to free speech and the power to disclose information if it is in the public interest under your regulations. Your testimony about the leak of the draft report dated May 17, 2007 was not credible. Indeed, it may have been deliberately false.

- a. Prior to the hearing did Mr. Mitchell discuss with you the disclosure of the May 17 draft of the Doan Report?

**A: It is our understanding from a reporter that the Doan Report was initially released from a GAO source. The newspaper sent us an email proving they had the report, or at least significant quotations from it. Moreover, I did not authorize any other version of the report to be released. Since this matter is now pending before the President, it would be inadvisable for me to comment on it further.**

- b. Did he tell you that the disclosure could only have come from within the agency?

**A: See Answer 4a.**

- c. Did you tell him that you did not believe that?

**A: See Answer 4a.**

- d. Do you acknowledge that the *Washington Post* published a correction that it used a May 17 draft and not the final report that was sent to Doan?

**A: See Answer 4a.**

- e. If not, please explain the basis for your refusal to acknowledge that such a correction was published in the *Washington Post*.

**A: See Answer 4a.**

- f. Do you now acknowledge that the disclosure of the May 17 draft could only have come from your office?

**A: This question is asking me to speculate on a hypothetical situation, so I will refrain from responding.**

- g. If not, please explain the basis for any "belief" that the May 17 draft could have come from somewhere else.

**A: See Answer 4a and 4f.**

- h. Please explain the basis for your belief you have personal First Amendment rights in connection with your leak of the May 17 draft report on Lurita Doan.

**A: I do not believe I have ever testified that I had First Amendment rights in connection with the release of reports from my office. My testimony about First Amendment rights concerned my private email expressions. What I said on this matter was that I had the lawful right to release reports. The Director of OSC has the prerogative to release reports under the agency's "routine use" exemptions to the Privacy Act, which are published in the federal register. If it is believed to be in the public interest or for other reasons outlined in Subsection Q of those routine uses, the Director may release any report he or she deems appropriate and which are covered by those provisions. A copy is attached for your convenience.**

- i. Please explain how it was in the public interest to release the unpublished and unfinished draft May 17 report on the Administrator of General Services Lurita Doan.

**A: Your question has a faulty premise: I did not authorize the release of that report, and therefore I did not make the determination that it would be in the public interest to release an unfinished draft of a report.**

5. During our examination of your agency's handling of the Lurita Doan matter, we learned the Administrator – the target of your investigation – was not permitted to see interview or deposition transcripts of witnesses against her.

- a. Is this true?

**A: Yes. Pursuant to our written policies regarding any investigation, the career staff of the Hatch Act supplied Ms. Doan's attorney, Mr. Michael Nardotti, with a transcript of the Ms. Doan's testimony in the form of the DVD of the recording, which is the best evidence of the testimony. OSC paid for a transcript of the hearing for our internal use. Ms. Doan had the DVD for over a month before a report went to the President. I do not know if she or her attorney had a transcript made. OSC does not make its transcripts available for any investigation. OSC provided this committee with its copy of the transcript of Ms. Doan's testimony because our policy is to provide the chair of an Oversight Committee such if it is requested in writing, and it will not otherwise compromise the Privacy Act or other interests of witnesses. We redacted what was provided to this Committee to protect the witnesses who testified adverse to Ms. Doan, whose names had not already been made public by this committee in March and later by the press. At that time, we provided Ms. Doan's attorney with a copy of the transcript since it had been supplied to Congress.**

The transcripts and recordings of witnesses other than the subject are not normally made available to the subject of an investigation pursuant to our policies and the practices of

most investigative bodies. These transcripts are interviews taken during the course of an investigation. OSC pays for any transcription, and the interviews are not depositions. Our agency naturally does not disclose every piece of information that we gather since certain disclosures could endanger our witnesses and would most certainly hamper our ability to encourage cooperation of prospective witnesses. However, any information deemed pertinent to a target of an investigation is provided to the target. In investigation of Ms. Doan witnesses explicitly expressed their fear of retaliation.

- b. If so, the procedural protections afforded to targets of OSC investigations appear to be lacking. Would you support legislation ensuring that targets of OSC investigations are able to have access to such transcripts?

**A: No. OSC's policies reflect proper procedural protections consistent with investigations done throughout the government. Automatically disclosing witness interview transcripts could have a disastrous effect on OSC's ability to conduct investigations. I urge Congress to weigh this matter carefully. Such would result in interference with the ability of OSC to independently investigate and prosecute wrongdoing. Few witnesses would be willing to come forward if they knew their names and their testimony would be automatically given to the target of an investigation. OSC lacks the power to protect the Schedule C political appointees from reprisal by obtaining corrective action at the MSPB. All that we could do if political appointee witnesses we victims of retaliation is investigate and report to the President.**

The targets do not come into these investigations without protection. The statutes under which we operate provide a level of due process that is consistent with what the law requires. Our report for a PAS such as Ms. Doan follows the procedural protections of the statute. If Ms. Doan were not a PAS, she would be subject to the jurisdiction of the MSPB where a host of other procedural due process rights would pertain to further prosecution. The President is the fact finder and decision maker in this case, and because it is in the political realm, one presumes Ms. Doan's rights and powers to petition the President are better than the average person who would be brought before MSPB, and also there are political considerations perhaps that also come into play here that give the President more flexibility than an administrative judge before MSPB would have. This is likely what Congress intended in fashioning the statute the way it did.

- c. What types of additional due process rights would you support?

**A: Our major legislative foci this year involve the reauthorization of this agency, the securing of effective USERRA protections for military servicemembers, and several fixes to our agency's ability to safeguard federal worker protections. None bear directly on due process, but I would be happy to review any suggestions you might have.**

6. In response to questions from Rep. Issa relating to the Report of Prohibited Political Activity (Lurita A. Doan), you repeatedly advised Rep. Issa that only you have seen the entire Doan file. Amplifying your comments, you told Mr. Issa that he has not seen the witness transcripts and complete documentary record. The disclosure of confidential evidence that would be material to your report but that was not in the report raises serious ethical questions.

- a. Please explain why evidence that you claim to be material to your report was not included in your report.

**A: The premise of the question is faulty. To the best of my recollection, I did not testify that evidence we had never made it into the report. I believe I testified that we possessed transcripts and documentary evidence that was not provided to the Committee for reasons of protecting the witnesses, but the evidence was discussed in the report. The OSC report on Ms. Doan has been provided to the President. Suffice it to say that we believe that the Doan Report, as sent to the President, substantiates a serious violation of the Hatch Act together with a failure to cooperate in our investigation, and obstruction of our investigation. It will be up to the President to agree or disagree with the report's findings and take whatever action he deems appropriate. It is inappropriate to further discuss this matter as it is before the fact finder.**

- b. Please provide the Committee with any ethical standard that would permit the disclosure of such evidence.

**A: Please refer to my answers to 4.**

- c. If you claim that public disclosure of confidential evidence not included in your report is in the "public interest" under your regulations, please explain how such a disclosure is in the public interest if it was not in the public interest to put it in your report.

**A: Please refer to my answers to 4.**

7. As an "independent" and "nonpartisan" federal agency, OSC officials have an obligation to conduct themselves professionally. On April 27, 2007 appearing on C-SPAN you said "our guide is the law, our lodestar are facts and evidence." You said "we make sure we read the case law to make sure we know what we are talking about." "Federal Courts and the MSPB tell us if we are right or wrong." Your Doan report relies on very few MSPB or federal court decisions.



**Act claims. However, so the record is clear, this committee released these names to the public, not OSC. The agency's release of the report went to the President and this Committee, as required. The individual names went into the public domain when this Committee issued a report and posted statements and a minority report on its website. This question and the ones that follow which assume some sort of public disclosure by OSC have an unsupportable premise.**

9. When lawyers present information to a court they have a responsibility to be true to the evidence. There is a discipline required for preparing court papers. This includes quoting the actual words witnesses said, and citing the precise page number from the deposition transcript where you found those words. These practices establish credibility and demonstrate methodical, unimpeachable legal analysis.

- a. Why do you eschew this practice in your Report on Prohibited Activity (Lurita A. Doan)?

**A: I disagree with the premise of the question that implies our report is not true to the evidence. Again, we will agree to disagree and what is the most effective way to present the report as a statement of our claims and our findings regarding the target. First, the practices of a court of law are irrelevant and we follow our agency's procedures and the statute in filing reports with the President. Second, as I have stated in Answer 8a, I will not comment on our drafting process.**

- b. You do not quote witnesses interviewed by OSC. You do not use footnotes to identify the transcript pages the information was found in the record. Please explain.

**A: Please see Answers 8a and 9a.**

10. You have presented no evidence to show anyone within GSA acted on statements you attribute to Doan.

- a. If her actions were coercive as you say they were, what did she coerce?

**A: You have a misunderstanding of the Hatch Act. The attempt at coercion need not have been successful to have been improper. We identified the action taken in the report. As to the actual findings of the report, again, as a pending investigative matter, I will refrain from making comment.**

- b. Couldn't this have meant what can we do after work, on our own time, to help the administration?

**A: See Answer 11a.**

- c. Why did you fail to consider these alternative meanings to ambiguous statements?

**A: See Answer 11a.**

- d. The ambiguous statements you attribute to her may have been rhetorical. Why did you rule this out?

**A: See Answer 11a.**

12. Your Report fails to identify the appropriate standard of evidence for analyzing whether Doan violated the Hatch Act.

- a. What standard of evidence did you use?

**A: We used the preponderance of evidence standard as required under the Hatch Act.**

- b. Why did you not set forth in the report the standard of evidence that you used?

**A: It is not a requirement that we do so; also, the preponderance of evidence standard is the standard most commonly applied and well known to practitioners during administrative proceedings.**

- c. What standard of evidence should the President use in analyzing the materials you submitted – preponderance of the evidence or substantial evidence? Some other standard?

**A: The preponderance of evidence standard, as that is the one used in all cases brought before the Merit Systems Protection Board.**

- d. Why didn't you tell the President?

**A: The President, including the White House Counsel's Office, is aware of the standards used and can easily learn by reference to the regularly cited case law in this area or by calling OSC experts in the Hatch Act unit.**

- b. You recommend the President punish Doan to the fullest extent, i.e. removal from office. What cases can you refer us to show that such a recommendation is consistent with MSPB and federal court case law?

**A: Again, it is inappropriate to comment on a matter pending before the President. However, Section 7326 of Title 5 of the United States Code provides that the presumptive penalty under the Hatch Act is removal. The statute further provides that the burden of proof is on the respondent to show by a preponderance of evidence that removal is inappropriate. OSC never cites case law in complaints filed with MSPB. Such pleadings are always restricted to the facts of the case at hand. As the statute calls for in our reports to the President, we simply cited the factual claims, results of the investigation, and the statutes and regulations with minimal case law. The Doan Report was consistent with all reports filed by OSC with the President.**

- c. If you are able to cite such precedent, please explain why you did not cite it in your report.

**A: OSC cited to statute and regulation – which is the clearest evidence of Congress’ intent with respect to penalty.**

- d. With so much case law counseling against removal from office, does the Doan matter raise special considerations that have not heretofore been considered by the MSPB?

**A: This matter is before the President, so as stated above, it is inappropriate for me to comment. However, OSC will not rely on cases that are not applicable, and if we recommend the presumptive penalty, and were guided by the wording of the statute itself, then there is no need to go beyond the statute.**

14. Solicitation cases warranting removal “have involved the coercion of subordinate employees, the most pernicious of the political activities prohibited by the Hatch Act.” Special Counsel v. Malone, 84 M.S.P.R. 342, 366 (1999). The Merit System Protection Board (MSPB) has summarized that generally removal is only called for when the violation “occurred under circumstances demonstrating a deliberate disregard of the Act.” Malone at 364-5. According to Malone, the MSPB generally considers six factors as aggravating or mitigating: 1) the nature of the offense and the extent of the employee’s participation; 2) the employee’s motive and intent; 3) whether the employee received the advice of counsel regarding the activities; 4) whether the employee ceased the activities; 5) the employee’s past employment record; and 6) the political coloring of the employee’s activities. Malone at 364, citing Special Counsel v. Riviera, 61 M.S.P.R. 440, 444 (1994).

- a. Why did OSC fail to analyze the six factors identified in Malone?

**A: I disagree with the premise of the question. Please refer to my answer in 4 for statutory and regulatory standards. See Answer 15a. Also, as I have mentioned before, we did explain all of the bases for OSC's recommendations and the evidence that supported that in the report. I did not authorize a disclosure of an earlier draft of OSC's report. What is contained in that earlier draft does not disclose considerations that influenced the decision as I understand the question, but rather the final report and letter to the President rearranges the recommendation on penalty and adds matters not contained in the earlier draft.**

use tailored to certain responsibilities of OSC and DOL in processing alleged violations of veterans' and reservists' federal employment rights will facilitate implementation of those responsibilities, consistent with procedures agreed to by OSC and DOL. A brief summary of the responsibilities addressed by the proposed new routine use follows:

*Violations of veterans' preference requirements (5 U.S.C. 2302(b)(11)).* OSC initially refers alleged violations of veterans' preference requirements to DOL for further action under the VEOA. (The MSPB lacks authority to order corrective action for violations alleged under 5 U.S.C. 2302(b)(11), which makes it a prohibited personnel practice to knowingly take, recommend, or approve, or fail to take, recommend, or approve any personnel action, if doing so would violate a veterans' preference requirement.) OSC has agreed to notify DOL of each such referral. DOL, in turn, will refer matters as appropriate to OSC for possible disciplinary action under 5 U.S.C. 1215.

*Violations of employment/reservation rights (USERRA).* Upon request by a claimant, DOL refers unresolved complaints alleging violations of veterans' rights to OSC pursuant to 38 U.S.C. 4324. If OSC is reasonably satisfied that the claimant is entitled to relief under USERRA, it may represent that person in litigation seeking corrective action before the MSPB (and, as necessary, the Federal Circuit Court of Appeals). In reviewing issues identified in the initial referral, OSC may contact DOL or any agency or person as needed to obtain relevant information on the claimant's entitlement to relief, and may consult with DOL on representation issues. If OSC declines representation, it notifies the claimant. OSC may also notify the agency involved. (No information about the basis for OSC's decision or OSC's assessment of the case is provided to the agency.)

For ease of reference by other government entities and the public, the entire system notice is printed below. It includes all non-substantive technical revisions, proposed changes to descriptions of system features listed above, proposed revisions to routine uses "p" and "q," and the proposed new routine use "r."

In accordance with 5 U.S.C. 552a(r), OSC has provided a report to the Office of Management and Budget (OMB) and the Congress on significant changes proposed in this notice.

**COMMENTS:** In accordance with 5 U.S.C. 552a(e)(4) and (11), members of the

public are given a 30-day period in which to comment. (OMB, which has oversight responsibility under the Privacy Act, also requires an opportunity for its review of significant changes proposed in the notice.) Any comments should be submitted to OSC in writing by August 13, 2001.

Comments should be sent by mail to Erin M. McDonnell, Planning and Advice Division, U.S. Office of Special Counsel, 1730 M Street, NW, Suite 201, Washington DC 20036-4505; comments may also be sent to the same addressee by fax, at (202)-653-5161.

**DATES:** The non-substantive technical revisions described in this notice are effective upon publication. Other changes proposed in the notice will become effective on [30 days after publication of this notice], unless comments received by OSC before then warrant further changes.

**FOR FURTHER INFORMATION CONTACT:** Erin M. McDonnell, U.S. Office of Special Counsel, at (202) 653-8971.

#### OSC/GOVT-1

##### SYSTEM NAME:

OSC/GOVT-1, OSC Complaint, Litigation and Political Activity Files.

##### SYSTEM LOCATION:

Human and Administrative Resources Management Branch, U.S. Office of Special Counsel, 1730 M Street, NW, Suite 201, Washington, DC 20036-4505.

##### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The principal categories of individuals covered by the system are persons filing allegations of prohibited personnel practices, improper political activity, or other prohibited activities; persons identified as engaging or participating in such practices or activities; persons filing disclosures of alleged wrongdoing by federal agencies, and persons identified as engaging or participating in such wrongdoing; persons requesting advisory opinions on political activity; persons charged by OSC in disciplinary action complaints filed by OSC with the Merit Systems Protection Board (MSPB); and plaintiffs seeking remedies against OSC in litigation related to the performance of its official functions.

##### CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence with persons (or their representatives) filing allegations of prohibited personnel practices, improper political activity, or other prohibited activities; correspondence with other agencies, entities, or individuals referring matters to OSC for review and/or investigation; exhibits

and other documentation from complainants, governmental entities or other third parties; interview records, including notes, summaries, or transcripts; affidavits; reports or other summaries of investigation; factual and legal summaries and analyses; administrative determinations; referrals to other agencies for appropriate action; records created or compiled in connection with litigation by or against OSC, or pertinent to OSC operations; requests and decisions under the Freedom of Information and/or Privacy Acts; and other correspondence and documents arising out of the performance of official OSC functions under 5 U.S.C. 1211-1221, 1501-1508, and 7321-7326; 38 U.S.C. 4324, and other applicable law or regulation.

##### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552, 552a, 1211-1221, 1501-1508, and 7321-7326; and 38 U.S.C. 4324.

##### ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

- a. To disclose the fact that an allegation of prohibited personnel practices or other prohibited activity has been filed;
- b. To disclose information to the Office of Personnel Management (OPM) pursuant to Civil Service Rule 5.4 (5 CFR 5.4), or to obtain an advisory opinion concerning the application or effect of civil service laws, rules, regulations or OPM guidelines in particular situations;
- c. To disclose to the Equal Employment Opportunity Commission or any other agency or office concerned with the enforcement of the anti-discrimination laws, information concerning any allegation or complaint of discrimination based on race, color, religion, sex, national origin, age, or handicapping condition;
- d. To disclose information to the MSPB or the President upon the filing or referral of a disciplinary action complaint against an employee on the basis of an OSC investigation;
- e. To disclose information to an agency, the MSPB, OPM, and the President reporting, under 5 U.S.C. 1214, the results of investigations which disclose reasonable grounds to believe a prohibited personnel practice has occurred, exists, or is to be taken;
- f. To disclose information to Congress in connection with the submission of an annual report on activities of the Special Counsel;
- g. To disclose information to any agency or person regarding allegations of prohibited personnel practices or

other prohibited activity or prohibited political activity filed against an agency or any employee thereof, for the purposes of conducting an investigation, in transmitting information to an agency under 5 U.S.C. 1213(c)(1) and the OSC procedures established thereunder; or to give notice of the status or outcome of the investigation;

h. To disclose information to any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and to identify the type of information requested), where necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the letting of a contract, or the issuance of a license, grant, or other benefit;

i. To disclose information to the Office of Management and Budget (OMB) at any stage in the legislative coordination and clearance process in connection with private relief legislation, as set forth in OMB Circular No. A-19;

j. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office (made at the request of that individual);

k. To furnish information to the National Archives and Records Administration (NARA) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906;

l. To produce summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained or for related work force studies;

m. To disclose records to the Department of Justice (DOJ) when:

- (1) The OSC, or
- (2) Any employee of the OSC in his or her official capacity, or
- (3) Any employee of the OSC in his or her individual capacity where the DOJ has agreed to represent the employee, or
- (4) The United States, where the OSC determines that litigation is likely to affect the OSC, is a party to litigation or has an interest in such litigation, and the use of such records by the DOJ is deemed by the OSC to be relevant and necessary to the litigation, provided, however, that the OSC determines that disclosure of the records to the DOJ is a use of the information contained in the records that is compatible with the purpose for which the records were collected;

n. To disclose records maintained by the OSC in a proceeding before a court or adjudicative body before which the OSC is authorized to appear, when:

- (1) The OSC, or
  - (2) Any employee of the OSC in his or her official capacity,
  - (3) Any employee of the OSC in his or her individual capacity where the OSC has agreed to represent the employee, or
  - (4) The United States, where the OSC determines that litigation is likely to affect the OSC, is a party to litigation or has an interest in such litigation, and the OSC determines that use of such records is relevant and necessary to the litigation, provided, however, that the OSC determines that disclosure of the records is a use of the information contained in the records that is compatible with the purpose for which the records were collected;
- o. To disclose information to the MSPB to aid in the conduct of special studies by the Board under 5 U.S.C. 1204(a)(3);
- p. To disclose information to the Office of Inspector General (OIG) or comparable internal inspection, audit, or oversight office of an agency for the purpose of facilitating the coordination and conduct of investigations and review of allegations within the purview of both the OSC and the agency OIG or comparable office;

q. To disclose information to the news media and the public when (1) the matter under investigation has become public knowledge, (2) the Special Counsel determines that disclosure is necessary to preserve confidence in the integrity of the OSC investigative process or is necessary to demonstrate the accountability of OSC officers, employees, or individuals covered by this system, or (3) the Special Counsel determines that there exists a legitimate public interest (e.g., to demonstrate that the law is being enforced, or to deter the commission of prohibited personnel practices, prohibited political activity, and other prohibited activity within the OSC's jurisdiction), except to the extent that the Special Counsel determines in any of these situations that disclosure of specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy; and

r. To disclose information to the U.S. Department of Labor (DOL) about OSC's referral of a complaint alleging a violation of veterans preference requirements to DOL for further action under the Veterans' Employment Opportunities Act of 1998 further; action under the Veterans' Employment Opportunities Act of 1998 (VEOA); to

disclose information to DOL or any agency or person as needed to develop relevant information about matters referred by DOL to OSC under 38 U.S.C. 4324 (the Uniformed Services Employment and Reemployment Rights Act of 1994) the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA); to disclose information to DOL or any agency or person as needed to advise on the status or disposition of matters referred by DOL to OSC for disciplinary action under 5 U.S.C. 1215, or corrective action litigation under 538 U.S.C. 4324.

#### POLICIES AND PRACTICES FOR STORAGE, RETRIEVAL, ACCESS CONTROLS, RETENTION AND DISPOSAL OF RECORDS IN THE SYSTEM:

##### STORAGE:

These records are stored in a variety of media, primarily consisting of file folders, and computer storage equipment.

##### RETRIEVABILITY:

Files in this system of records are retrievable by the names of key individuals or agencies involved (e.g., complainants or requesters; subjects identified in corrective action or disciplinary proceedings, warning letters, or other determinations; legal, congressional, or other representatives or points of contact; or key witnesses), although files are generally retrieved by the name of: (a) The complainant alleging a prohibited personnel practice, or other prohibited activity; (b) the alleged subject of a complaint about prohibited political activity; (c) the person filing an allegation through the OSC whistleblower disclosure channel; (d) the name of the person filing a request for an advisory opinion on political activity; (e) the name of the person on whose behalf OSC seeks corrective action, or the person against whom OSC seeks disciplinary action, in litigation before the MSPB; and (f) the plaintiff in litigation against OSC.

##### SAFEGUARDS:

These records are located in lockable file cabinets or in secured areas. The required use of computer password protection identification features and other system protection methods also restrict access. Access is limited to those agency personnel who have an official need for access to perform their duties.

##### RETENTION AND DISPOSAL:

NARA keeps records about prohibited personnel practices and other prohibited activity for three years after the matter or case is closed, or for six years if the file has been the subject of a Freedom of Information Act request.

TOM DAVIS, VIRGINIA,  
CHAIRMAN

CHRISTOPHER SHAYS, CONNECTICUT  
DAN BURTON, INDIANA  
ILEANA ROS-LEHTINEN, FLORIDA  
JOHN M. MC HUGH, NEW YORK  
JOHN L. MICA, FLORIDA  
GIL GUTKNECHT, MINNESOTA  
MARK E. SCUDER, INDIANA  
STEVEN C. LATOURETTE, OHIO  
TODD RUSSELL PLATT, PENNSYLVANIA  
CHRIS CANNON, UTAH  
JOHN J. DUNCAN, JR., TENNESSEE  
CANDICE MILLER, MICHIGAN  
MICHAEL R. TURNER, OHIO  
DARRELL ISSA, CALIFORNIA  
VIRGINIA BROWN-WAITE, FLORIDA  
JON C. PORTER, NEVADA  
KENNY MARCHANT, TEXAS  
LYNN A. WESTMORELAND, GEORGIA  
PATRICK T. MC HENRY, NORTH CAROLINA  
CHARLES W. DENT, PENNSYLVANIA  
VIRGINIA FOXX, NORTH CAROLINA

ONE HUNDRED NINTH CONGRESS

# Congress of the United States

## House of Representatives

COMMITTEE ON GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-6074  
FACSIMILE (202) 225-3674  
MINORITY (202) 225-6061  
TTY (202) 225-6652

<http://reform.house.gov>

HENRY A. WAXMAN, CALIFORNIA,  
RANKING MINORITY MEMBER

TOM LANTOS, CALIFORNIA  
MAJOR R. OWENS, NEW YORK  
EDOLPHUS TOWNS, NEW YORK  
PAUL E. KANJORSKI, PENNSYLVANIA  
CAROLYN B. MALONEY, NEW YORK  
ELIJAH E. CUMMINGS, MARYLAND  
DENNIS J. KUCINICH, OHIO  
DANNY K. DAVIS, ILLINOIS  
Wm. LACY CLAY, MISSOURI  
DIANE E. WATSON, CALIFORNIA  
STEPHEN F. LYNCH, MASSACHUSETTS  
CHRIS VAN HOLLEN, MARYLAND  
LINDA T. SANCHEZ, CALIFORNIA  
C.A. DUTCH RUPPERSBERGER,  
MARYLAND  
BRIAN HIGGINS, NEW YORK  
ELEANOR HOLMES NORTON,  
DISTRICT OF COLUMBIA

BERNARD SANDERS, VERMONT,  
INDEPENDENT

May 17, 2005

VIA FACSIMILE

Mr. Scott Bloch  
U.S. Office of Special Counsel  
1730 M Street, N.W., Suite 300  
Washington, D.C. 20036-4505

Dear Mr. Bloch,

The Committee on Government Reform and has recently reviewed your efforts to respond to the findings of Government Accountability Office (GAO) 04-36. In that report, the GAO noted that the Office of Special Counsel (OSC) demonstrated a chronic inability to process cases in a timely manner which inevitably led to case backlogs. The report called for the OSC to develop a comprehensive strategy to address these recurrent failures.

We appreciate the professional seriousness with which you approached these recommendations and reduced the existing backlogs in the year following this report. Unfortunately, this activity, while beneficial to whistleblowers, was regarded with suspicion by activists who claim to work on behalf of whistleblowers.

At your invitation, a bipartisan group of congressional staff visited your offices on three occasions to review closed cases. The staff reviewed any closed case they requested, and you provided access to decision makers for questions and policy discussions. At the end of this period of review, one previously critical Senate staffer informed us "we have satisfied ourselves that they did not throw any folders into the Potomac." We are also satisfied that your hard work – and smart work – has resulted in a more responsive Office of Special Counsel.

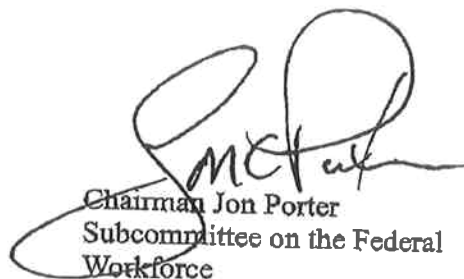
Mr. Scott Bloch  
May 17, 2005  
Page 2

We want to congratulate you on your efforts to improve the services you provide to whistleblowers. We continue to be impressed with the sincerity and pragmatism with which you and all your staff approach your jobs. You are providing a great service to the American people and the Federal government by protecting whistleblowers from illegal reprisals.

Sincerely,



Chairman Tom Davis  
Committee on Government Reform



Chairman Jon Porter  
Subcommittee on the Federal  
Workforce

cc. Rep. Henry Waxman, Ranking Member